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2009 DEC -4 AM 9: 17

HAWAII LABOR  
RELATIONS BOARD

Attorneys for Director of Labor  
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. OSH 2009-15
	)	(Inspection No. 311435184)
DIRECTOR, DEPARTMENT OF LABOR	)	
AND INDUSTRIAL RELATIONS,	)	STIPULATION AND SETTLEMENT
	)	AGREEMENT; EXHIBIT A; APPROVAL
Complainant,	)	AND ORDER
	)	
vs.	)	
	)	
PSC INDUSTRIAL OUTSOURCING, LP,	)	
	)	
Respondent.	)	

**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Director of Labor and Industrial Relations ("Director") and  
Respondent PSC INDUSTRIAL OUTSOURCING, LP ("Respondent") having reached a full and  
complete settlement of the above-captioned contested case presently pending before the Hawaii  
Labor Relations Board ("Board") stipulate and agree as follows:

From October 7, 2008 through March 30, 2009, the Director, by and through the  
State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's

workplace located at 91-410 Komohana Street, Kapolei, Hawaii 96707.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on April 2, 2009 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$15,000.00. *See Exhibit A.*

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 91-410 Komohana Street, Kapolei, Hawaii 96707.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Citation is amended as follows:

a. For Citation 1 Item 1, the alleged violation description ("AVD") is revised to say: "The employer's written safety and health program was not effective because it did not address subcontractors working or conducting hot work activities at its facility."

b. For Citation 1 Item 2, the AVD is revised to say: "The employer could not show it identified new or previously missed hazards or failures in engineering, work practice, and administrative controls via its in-house inspections, atmospheric testing protocols, or hot

work authorization protocols.” The characterization of Citation 1 Item 2 shall also be changed from “serious” to “other than serious” and its \$2,500.00 penalty shall be deleted.

c. For Citation 1 Item 3, the AVD is revised to say: “The employer allowed a subcontractor to proceed with hot work activities at its facility even though the employer could not demonstrate that individuals responsible for authorizing hot work operations had inspected the area each day.”

d. Citation 1 Items 4, 5, and 6 shall be completely deleted.

5. Based on the amendments discussed above, Respondent’s aggregate penalty is reduced from \$15,000.00 to \$5,000.00, which Respondent shall pay in full to the Director of Budget and Finance not more than thirty (30) days after the Board approves and files this Agreement; Respondent shall send its payment to the Director’s attorneys.

6. Respondent agrees that it has or will abate each violation listed in the Citation, as amended, in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH not more than ten (10) days after this Agreement has become a final Order of the Board; failure to timely do so may result in additional penalties or follow up inspections.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purpose, see HRS § 396-14, other than proceedings under the Hawaii Occupational Safety and Health Law.

9. Respondent shall post a copy of this Agreement and Order in a prominent

place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

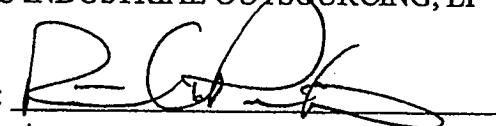
11. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

12. The Parties agree that upon the approval of this Agreement by the Board, the Board shall dismiss this case and Respondent's appeal.

DATED: Honolulu, Hawaii, NOVEMBER 24, 2009.

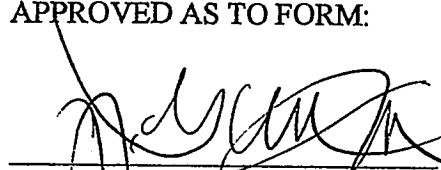
PSC INDUSTRIAL OUTSOURCING, LP

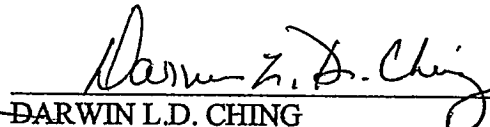
By:  
Its

  
HEALTH & SAFETY DIRECTOR

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

  
J. GERARD LAM  
Deputy Attorney General  
Attorney for Director of Labor and  
Industrial Relations, State of Hawaii

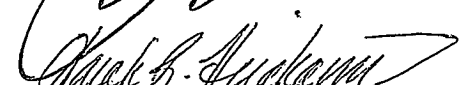
  
DARWIN L.D. CHING

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 369  
DATED: December 4, 2009



\_\_\_\_\_  
JAMES B. NICHOLSON, Chair



\_\_\_\_\_  
SARAH R. HIRAKAMI, Member

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In re: Director, Dept. Of Labor And Indus. Relations v. PSC Industrial Outsourcing, LP, Case  
No. OSH 2009-15, Stipulation And Settlement Agreement; Exhibit "A"; Approval And Order.

## State of Hawaii

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813  
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7005 1820 0003 3812 1436

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## Citation and Notification of Penalty

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**To:**

PSC Industrial Outsourcing LP  
and its successors  
5151 San Felipe, Ste 1600  
Houston, TX 77056

Inspection Number: 311435184 (Conroy  
Dang)  
Inspection Date(s): 10/07/2008- 03/30/2009  
Issuance Date: 04/02/2009  
OSHSO ID: R1844  
Optional Report No.: 00509  
Inspection Type: Fatality/Catastrophe  
Scope of Inspection: Comprehensive Inspection

**Inspection Site:**

91-410 Komohana St  
Kapolei, HI 96707

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

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This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

**All abatement verification documents must contain the following information:** 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

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**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.



## ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

PSC Industrial Outsourcing LP  
5151 San Felipe Ste 1600  
Houston, TX 77056

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

I attest that the information contained in this document is accurate and that the affected employees and their  
representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division



**NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE**

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 04/02/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on \_\_\_\_\_ at \_\_\_\_\_.

Employees and/or representatives of employees have a right to attend an informal conference.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

Inspection Number: 311435184

Inspection Dates: 10/07/2008-03/30/2009

Issuance Date: 04/02/2009



**Citation and Notification of Penalty**

Company Name: PSC Industrial Outsourcing LP  
Inspection Site: 91-410 Komohana St, Kapolei, HI 96707

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**Citation 1 Item 1 Type of Violation: Serious**

HAR §12-60-2(b)(1)(A) was violated because:

Employer's written safety and health program was not effective in designating who would conduct atmospheric testing for subcontractors' hot work activities at their plant facilities, not effective in determining who would conduct official determinations if it was safe to proceed with subcontractors' hot work activities at their plant facilities, nor effective in addressing subcontractors working at their plant facilities. The employer's program failed to control subcontractor's welding activities which resulted in a waste oil storage tank to explode causing one fatality and three workers being injured on October 7, 2008.

§12-60-2(b)(1) states "Written safety and health program. (A) The employer shall institute and maintain an effective safety and health program to identify, evaluate and control workplace hazards. Employer safety and health programs which were developed prior to the promulgation of this standard may be used to satisfy this requirement so long as they meet the criteria for an acceptable program set forth in (B) below."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Establishment

Date By Which Violation Must be Abated:  
Penalty:

05/05/2009  
\$ 2,500.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

Inspection Number: 311435184

Inspection Dates: 10/07/2008 - 03/30/2009

Issuance Date: 04/02/2009



**Citation and Notification of Penalty**

Company Name: PSC Industrial Outsourcing LP  
Inspection Site: 91-410 Komohana St, Kapolei, HI 96707

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**Citation 1 Item 2 Type of Violation: Serious**

HAR §12-60-2(b)(3) was violated because:

Employer conducted ineffective audits and inspections of subcontractors' hot work activities at their waste oil recycling plant facility to ensure employer's hot work permitting and atmospheric testing protocols were being properly done by employer's personnel before allowing subcontractor personnel to conduct hot work activities at their establishment. Subcontractor's welding activities resulted in a waste oil storage tank to explode causing one fatality and three workers being injured on October 7, 2008.

§12-60-2(b)(3) states "Periodic inspections. The employer shall conduct periodic in-house safety and health inspections so that new or previously missed hazards or failures in engineering, work practice, and administrative controls are identified. The in-house inspections will be conducted by individuals who are trained to recognize hazardous conditions, as members of the safety and health committee or a person designated and trained by the employer for the facility's safety and health program."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Project site at 91-410 Komohana Street

Date By Which Violation Must be Abated:  
Penalty:

05/05/2009

\$ 2,500.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: PSC Industrial Outsourcing LP  
Inspection Site: 91-410 Komohana St, Kapolei, HI 96707

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#### Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.252(a)(2)(iv) [Refer to chapter 12-78.2, HAR] was violated because:

Employer allowed subcontractor to proceed with welding activities over a multiple week period even though employer did not conduct official determinations if it was safe to proceed with subcontractor's welding activities at their waste oil recycling plant facility. On October 7, 2008, subcontractor's welding activities caused a waste oil storage tank to explode resulting in one fatality and three workers being injured.

29 CFR 1910.252(a)(2)(iv) states "Authorization. Before cutting or welding is permitted, the area shall be inspected by the individual responsible for authorizing cutting and welding operations. He shall designate precautions to be followed in granting authorization to proceed preferably in the form of a written permit."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Project site at 91-410 Komohana Street

Date By Which Violation Must be Abated:  
Penalty:

05/05/2009  
\$ 2,500.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: PSC Industrial Outsourcing LP  
Inspection Site: 91-410 Komohana St, Kapolei, HI 96707

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#### Citation 1 Item 4 Type of Violation: **Serious**

29 CFR 1910.252(a)(2)(vi)(C) [Refer to chapter 12-78.2, HAR] was violated because:

Employer allowed subcontractor to proceed with welding activities over a multiple week period even though employer did not conduct atmospheric testing nor conducted official determinations if it was safe to proceed with subcontractor's welding activities at their waste oil recycling plant facility. On October 7, 2008, subcontractor's welding activities caused a waste oil storage tank to explode resulting in one fatality and three workers being injured.

29 CFR 1910.252(a)(2)(vi) states "Prohibited areas. Cutting and welding shall not be permitted in the following situations: [C] In the presence of explosive atmospheres (mixtures of flammable gases, vapors, liquids, or dusts with air), or explosive atmospheres that may develop inside uncleaned or improperly prepared tanks or equipment which have previously contained such materials, or that may develop in areas with an accumulation of combustible dusts."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Project site at 91-410 Komohana Street

Date By Which Violation Must be Abated:	05/05/2009
Penalty:	\$ 2,500.00



### Citation and Notification of Penalty

Company Name: PSC Industrial Outsourcing LP  
Inspection Site: 91-410 Komohana St, Kapolei, HI 96707

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#### Citation 1 Item 5 Type of Violation: **Serious**

29 CFR 1910.252(a)(2)(xiii)(D) [Refer to chapter 12-78.2, HAR] was violated because:

Employer did not effectively train and/or orient subcontractor personnel who visited and/or worked at their waste oil recycling plant facility to make them aware of hazards and safety and health protocols to follow at their establishment. Lack of knowledge of the plant facility hazards and safety and health protocols to follow contributed to subcontractor's welding activities taking place at the waste oil recycling plant facility that resulted in a waste oil storage tank to explode causing one fatality and three workers being injured on October 7, 2008.

29 CFR 1910.252(a)(2)(xiii) states "Management. Management shall recognize its responsibility for the safe usage of cutting and welding equipment on its property and: [D] Advise all contractors about flammable materials or hazardous conditions of which they may not be aware."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Project site at 91-410 Komohana Street

Date By Which Violation Must be Abated:  
Penalty:

05/05/2009  
\$ 2,500.00



**Citation and Notification of Penalty**

Company Name: PSC Industrial Outsourcing LP  
Inspection Site: 91-410 Komohana St, Kapolei, HI 96707

**Citation 1 Item 6** Type of Violation: **Serious**

29 CFR 1910.252(a)(2)(xiv)(E) [Refer to chapter 12-78.2, HAR] was violated because:

Employer allowed subcontractor to proceed with welding activities over a multiple week period even though employer did not determine that the subcontractor's welder secured approval that conditions were safe to proceed with welding activities at their waste oil recycling plant facility. On October 7, 2008, subcontractor's welding activities caused a waste oil storage tank to explode resulting in one fatality and three workers being injured.

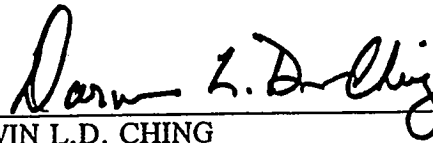
29 CFR 1910.252(a)(2)(xiv) states "The Supervisor: [E] Shall determine that the cutter or welder secures his approval that conditions are safe before going ahead."

Abatement Note: Abatement documentation, such as written, videographic or photographic evidence of abatement is required.

Location: Project site at 91-410 Komohana Street

Date By Which Violation Must be Abated:  
Penalty:

05/05/2009  
\$ 2,500.00

  
\_\_\_\_\_  
DARWIN L.D. CHING  
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



**State of Hawaii**

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

**SUMMARY OF PENALTIES**

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**Company Name:** PSC Industrial Outsourcing LP  
**Inspection Site:** 91-410 Komohana St, Kapolei, HI 96707  
**Issuance Date:** 04/02/2009

**Summary of Penalties for Inspection Number 311435184**

Citation 1, Serious	= \$ 15,000.00
<b>TOTAL PENALTIES</b>	<b>= \$ 15,000.00</b>

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Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.